

Date signed April 22, 2005



Paul Mannes

PAUL MANNES
U. S. BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Greenbelt**

IN RE:	:	
	:	
GREGORY K. FRIES	:	Case No. 04-34844PM
	:	Chapter 13
Debtor	:	
-----	:	
H. DEAN BOULAND	:	
PAUL A. NETTLEFORD	:	
Substitute Trustees, and	:	
THE ESTATE OF BARBARA QUINNAM	:	
Movants	:	
vs.	:	
	:	
GREGORY K. FRIES	:	
Respondent	:	
-----	:	

MEMORANDUM OF DECISION

This case came before the court on the Motion of H. Dean Bouland and Paul A. Nettleford, Substitute Trustees, and the Estate of Barbara Quinnam for relief from the automatic stay of § 362(a) of the Bankruptcy Code so as to enable consummation of a November 2, 2004, auction sale to Richard Pappas. The Debtor urges that by virtue of the this bankruptcy filing the afternoon before the auction sale that the Motion should be denied.

As noted in the pleadings of the parties, the subject property was originally scheduled for sale on July 30, 2002. Shortly before that time, the Debtor filed his first petition under Chapter 13, and the sale was cancelled at considerable cost to the Substitute Trustees. When Debtor failed to prosecute his Chapter 13, that case was dismissed, and a second foreclosure was

scheduled for January 14, 2003, at which time an entity known as Abseco, Inc., purchased the property for \$195,000.00. When the purchaser failed to meet its obligations, the Circuit Court for Montgomery County, Maryland, ordered that the sale be cancelled and the property be resold at the risk and expense of the defaulting purchaser. On September 12, 2003, the Circuit Court for Howard County, Maryland, entered a Judgment of Absolute Divorce, severing the marriage of the Debtor and Rebecca Jean Bruffey Fries. That Order is notable insofar as the instant Motion is concerned because the Debtor's spouse, in addition to various other provisions in the Divorce Decree, was granted a monetary award of \$986,948.43 that was reduced to judgment, as well as 100% of the net proceeds of the subject property, known as 3312 Belle Cote Drive, Burtonsville, Maryland.

The Debtor was ineligible to file a bankruptcy case under Chapter 13 by virtue of the limitations of § 109(e) of the Bankruptcy Code that limits Chapter 13 filing to parties with non-contingent liquidated unsecured debts of less than \$307,675.00. When Debtor listed the amount owing to Rebecca Fries as "unknown" in his Schedule F, Unsecured Creditors Without Priority, he and counsel were trifling with the court in attempting to conceal from the Chapter 13 Trustee and all parties in interest his underlying ineligibility for relief under that Chapter of the Bankruptcy Code. This, in and of itself, amounts to a bad faith filing. Furthermore, the Debtor had no interest in the subject property at the time of the filing of this bankruptcy case. By virtue of the unappealed Circuit Court judgment, Debtor's former spouse owned 100% of the net proceeds of the parties' jointly owned real property. Debtor's equity subject to redemption was zero.

Finally, the objective futility of any Chapter 13 Plan is demonstrated by the fact that Debtor's total income amounts to \$200.00 per month, and the priority claims filed in his case that must be paid in full under § 1322(a)(2) of the Bankruptcy Code exceed \$235,000.00.

While the court is unaware of any legal basis by which the stay of 11 U.S.C. § 362(a) would be operative in this case, the court will nonetheless, in the exercise of caution and in recognition of the outrageous conduct on the part of Debtor in the case, enter an order annulling the stay so as to facilitate consummation of the foreclosure sale where Richard Pappas was the high bidder. An appropriate order will be entered.

cc:

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Nancy S. Grigsby, Trustee, P.O. Box 958, Bowie, MD 20718

End of Opinion